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A review of restorative justice programmes for First Nations Peoples in Queensland

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ABSTRACT

This paper reports on the development and implementation of restorative justice policy and practice for First Nations Peoples in Queensland. Using diverse public source materials to produce a summary history and assessment of the Queensland experience, the study found that restorative justice can provide an appropriate response to crime within First Nations communities, but that programmes have had limited application and utilisation to-date. The findings suggest that programmes must involve First Nations Peoples in programme design and delivery, while addressing the systemic disadvantages faced by these communities through a substantial increase in government investment. The study identified the need for increased application of restorative justice and enhanced research on programme outcomes; acknowledging the need to increase attention to victims' needs and experiences. The paper also recognised the need for more First Nations led research to explore how restorative justice programmes can be enhanced to improve outcomes for First Nations Peoples.

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Introduction

It is widely acknowledged that First Nations Peoples are overrepresented in Western criminal justice systems and that better responses are needed to address this injustice, such as restorative justice practices. In Australia, the term First Nations Peoples refers to the many nations of Aboriginal and Torres Strait Islander Peoples. At the time of the most recent census in 2021, the average daily number of First Nations adults in custody was 12,624 accounting for 31% of the adult prisoner population, while representing just 2.97% of the adult Australian population (Australian Bureau of Statistics (Australian Bureau of Statistics, 2022a, 2022b)). First Nations youth were also 20 times more likely to be in detention than non-Indigenous youth, accounting for 50% of the detention population but just 6% of the Australian youth population (Australian Institute of Health and Welfare (Australian Institute of Health and Welfare, 2021a)). Scholars have debated the potential utility of restorative justice to help address this overrepresentation, arguing that, among other things, it might help to reduce contact with the justice system through diversion – although, several studies have shown First Nations young people are less likely to receive a diversionary referral than non-Indigenous youth (e.g., Allard, 2010; Cunneen et al., 2021). While these issues continue to be explored, research into the development and implementation of restorative justice policy and practice is limited.

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In light of the above, the present study examined changes to restorative justice policy and practice in the state of Queensland, Australia, through a desktop review of public government, legislative and academic materials. Queensland was selected as a case study because it has well-established restorative justice programmes for justice-involved youth and adult offenders, including two projects in remote Aboriginal communities: the Mornington Island and the Aurukun Restorative Justice Projects. Restorative justice policy development traces back to the post-Fitzgerald criminal justice reforms, presenting a lengthy timeline with almost 30-years of experience to consider. This examination provided a crucial opportunity to identify and explore significant moments of change, and the potential strengths and limitations of restorative options for First Nations Peoples, ascertaining implications for enhanced programme development and implementation.

Situating restorative justice in the Australian context

The Royal Commission into Aboriginal Deaths in Custody (1991) provided a detailed examination of the overrepresentation of First Nations Peoples in Australia's criminal justice system, which continues to affect communities today. The report suggested that sociological theories of crime provided a greater understanding of offending behaviours by repositioning an understanding of crime from the individual to broader social processes. First Nations Peoples face profound systemic disadvantages that stem from the devastating intergenerational experiences of European colonisation, dispossession, and the child removal policies of the Stolen Generations, which are perpetuated by the criminal justice system (Blagg, 2016; Chua & Foley, 2014; Holdom, 2015). As a result, First Nations youth are more likely to have first contact with the criminal justice system at a younger age, to have multiple contacts, and to experience multiple episodes of supervision than non-Indigenous young people (Australian Institute of Health and Welfare, 2021b). These systemic disadvantages include poverty, inadequate housing, low educational and training outcomes, and a lack of employment opportunities, as well as systemic racism and over-policing (Allard, 2010; Australian Government, 2020; Blagg, 2016).

It has been recommended that these systemic disadvantages be addressed through holistic and multi-faceted approaches, involving communities in the response to crime, with an increased use of diversion (e.g., Allard, 2010; Cunneen et al., 2021). The Australian Law Reform Commission (2017) has also advocated for a greater emphasis on community-led diversion programmes with increased welfare support – specifically for the reduction of alcohol misuse. Similarly, Dawes et al. (2017) identified alcohol misuse as a significant facilitator of criminality in First Nations Communities, while calling for increased social support through community-based initiatives. Additionally, Cunneen et al. (2021) argued that diversion programmes for First Nations Peoples should be developed and led by communities, incorporating community voices and traditional customs.

Restorative justice is often presented as a diversion programme with the potential to address welfare needs and engage communities in the justice response (e.g., Kirkwood & Hamad, 2019; Munoz et al., 2022). While a variety of models have been applied (e.g., victim-offender mediation or restorative conferencing), it has been defined broadly as “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future” (Marshall, 1996, p. 37). The principles of restorative justice are also said to align with the aims of social welfare (e.g., reparation, inclusivity and accountability), providing the opportunity to address the needs of both victims and offenders in the response to crime (Fox, 2009; Kirkwood & Hamad, 2019).

Furthermore, most evaluations of restorative justice programmes have reported high rates of success on a range of measures. Victims, offenders and other stakeholders have typically scored the experience highly on satisfaction and perceived fairness, and victims have also reported reductions in feelings of trauma and fear of crime (e.g., Hayes & Daly, 2004; Strang et al., 2006, 2013). Some studies have also shown significant reductions in recidivism rates when compared to traditional

justice responses (e.g., Wong et al., 2016). However, these findings have not been replicated consistently (e.g., Piggott & Wood, 2018). Studies indicate that programme outcomes are dependent on a range of variables, including the language competency of participants and the strength of support networks (e.g., Hayes & Snow, 2013; Suzuki & Yuan, 2021). In a study of youth conferencing outcomes, Little et al. (2018) found that First Nations youth were less likely to experience reductions in recidivism when other factors had been controlled for (e.g., prior contact with the criminal justice system), suggesting that conferencing alone would be insufficient to achieve reductions in overrepresentation without addressing co-morbid risk factors. They suggested that this was likely due to young people returning to “communities characterised by high levels of economic and social disadvantage” (p. 4083). However, while there has been debate as to the appropriateness of restorative justice conferencing for First Nations Peoples (discussed and referenced throughout this paper), to the best knowledge of the authors, no studies have specifically considered the cultural competency of convenors and the impact of this on outcomes for First Nations youth.

Some scholars have reported similarities to traditional First Nations peace-making practices and suggested these programmes can provide opportunities to incorporate First Nations community voices and traditions in the response to crime (e.g., Brigg et al., 2018; Hand et al., 2012). Restorative justice provides a means to mend relationships between individuals and their communities and address some of the disadvantages that may contribute to offending behaviours through the negotiation of outcome agreements, which should improve programme outcomes for First Nations Peoples (Chua & Foley, 2014; Hand et al., 2012). However, Young (2019) has cautioned that the inclusion of First Nations Peoples in programme delivery does not ensure the incorporation of customary values. He argued that restorative programmes must involve First Nations Peoples in all aspects of programme development and implementation to provide the most culturally appropriate programmes, which will increase legitimacy and acceptance within communities, and enhance efficacy. Programmes must also acknowledge and address the systemic disadvantages faced by First Nations Peoples to realise the potential to reduce involvement with the criminal justice system (Chua & Foley, 2014; Cunneen et al., 2021).

Method

In the present study, we explored the development of restorative justice in Queensland and implications for First Nations Peoples through a qualitative case study design. We used open access sources, including government sponsored reports and statistical data, legislation, parliamentary debate and news media, as well as independent academic publications. The use of these sources allowed for an exemption from ethical review under the institution’s Human Research Ethics Committee guidelines. However, the authors engaged in consultation with the institution’s ethics department to ensure the research met ethical standards.

The data were obtained through systematic searches of Queensland Government Hansard and parliamentary archives, state government departmental annual reports, the AustLII legislative database, the media database Factiva.com, and academic databases, from January 1990 to December 2021. Materials were identified using the search terms: “restorative,” “justice,” “conferenc*,” “mediation,” “circle,” “alternative dispute resolution,” and “dispute resolution.” To address missing data or to expand on data these terms were combined where possible and additional searches were conducted as necessary. This resulted in more than 2,500 materials, which were scanned for relevance, with documents excluded if the content referred solely to other jurisdictions or civil matters. A total of 495 materials were deemed appropriate for analysis.

Key themes, categories and ideas were identified within these materials through a content analysis (e.g., Drisko & Maschi, 2016). The analysis was guided by the existing literature and search terms, rather than adhering to a structured codebook, with a focus on manifest content. Depending on complexity, materials were read between two to four times, with relevant sections of text coded

in line with the search terms or themes present within the materials themselves. These segments were then organised and reported chronologically, producing a considerable narrative, with the resulting data verified against the original materials. The findings are reported in a narrative format, identifying significant moments of change in restorative justice policy and practice in Queensland. The authors consulted a cultural advisor on the interpretation and discussion to best ensure the appropriate representation of findings for First Nations Peoples.

Findings

Establishing the foundation for restorative justice in Queensland

In 1989, following revelations of widespread corruption and misconduct in the Queensland Police Service, the Acting State Premier and Minister for Police – Bill Gunn – ordered a Commission of Inquiry into police misconduct (Silva & Bavas, 2018, January 1). Conducted by Fitzgerald (1989), this inquiry triggered criminal justice reforms with a strong focus on crime prevention and community-based interventions. Pursuant to the recommendations for increased community participation, Queensland witnessed the introduction of civil mediation practices and the *Dispute Resolution Centres Bill*, which established the foundation for restorative justice practices. The Bill came into effect in July 1990 under the Goss Labor Government (i.e., 1989–1996), establishing the Community Justice Division under the Department of Attorney-General.

The Community Justice Division launched the Community Justice Program, which provided community-based mediation services. In the first 12-months of operation, the programme conducted more than 200 cases, including an eight-day mediation session within an Aboriginal community at the request of the Aboriginal Coordinating Council – although no details were provided about this example (Queensland Parliament, 1991, October 9). The programme was expanded across six regions, with additional funding to train First Nations mediators, with the aim to enable First Nations communities to tailor restorative processes to their own needs (Queensland Parliament, 1991, October 9) – although, as becomes evident, this never eventuated. Following on from this work, the first victim-offender mediation programme in Queensland was then established – the Crime Reparation Project.

The Crime Reparation Project was a pre-sentence mediation model trialled through the Beenleigh Magistrates Court (Clarke & Davies, 1994). It targeted non-habitual adult offenders and all justice-involved youth who pled guilty to minor property offences within the Beenleigh police district area. An evaluation of the project found that within the six-month trial period, a total of 25 referrals were made, with 13 mediations held (Clarke & Davies, 1994). Agreements were achieved in all mediations. However, the study did not follow up on completion rates or the impact that agreements had on sentencing decisions. It did not identify participants' ethnicity, and it did not explore the perceptions of stakeholders or recidivism outcomes.

The community conferencing pilot

Building on the limited successes of the Crime Reparation Project, the Department of Justice and the Juvenile Justice Branch launched the Community Conferencing Pilot in April 1997. The pilot was implemented at three sites – Ipswich, Logan and Palm Island (Bwngcolman), with the latter an Aboriginal community, home to the Manbarra People. An evaluation was conducted by Hayes and Prenzler (1998; see also Palk et al., 1998). The pilot programme accepted 143 referrals and conducted 76 conferences during the evaluation period from April 1997 to May 1998. The evaluation reported high rates of participant satisfaction, with generally supportive responses from all stakeholders regarding the programme aims (Hayes & Prenzler, 1998).

The Palm Island site had significantly less referrals during the evaluation period, case file data were not consistently recorded, and the data collection procedures were not as efficient as the other

two locations (Hayes & Prenzler, 1998). These restrictions limited the availability of information from the Palm Island site for a comparative analysis and, as such, it was excluded from the analysis in the evaluation – though, a comparative analysis likely would not have been appropriate due to the inherent differences between the remote Palm Island community and the urban communities of the other two sites. The Palm Island Community Justice Group’s approach to service delivery appeared to be meeting the objectives, to build networks and reduce crime in the community. This view was supported by stakeholders, who acknowledged the cultural appropriateness of the Group’s processes, which involved a less formal approach to conference delivery (Hayes & Prenzler, 1998).

The research team presented 20 recommendations for future programme delivery, including improving the infrastructure on Palm Island and consideration of similar arrangements with other remote First Nations communities that could be suitable for conferencing. They argued that “maximum use should be made of conferencing for Indigenous people given the close links between conferencing and traditional Aboriginal justice, and the profound problem of the overrepresentation of Indigenous people in the criminal justice system” (Hayes & Prenzler, 1998, p. 65). However, a conference paper by Paul Chantrill, Lecturer in Aboriginal Studies from the University of New England (1999, March 1), challenged this last recommendation, acknowledging the potential benefits of community conferencing but questioning the appropriateness of widespread application to differing First Nations communities. He called for a substantial evaluation of the Palm Island conferencing scheme in the future with the inclusion of community feedback on the programme. To the best knowledge of the authors, this evaluation did not occur.

First nations peoples in the Queensland criminal justice system

Despite these and other criminal justice reforms in the post-Fitzgerald era, First Nations Peoples remained significantly overrepresented in the Queensland criminal justice system. In October 2000, Lawrence Springborg, member of the Liberal National Party Opposition, called for widespread implementation of restorative justice processes throughout First Nations communities to better address justice and welfare issues (Queensland Parliament, 5 October 2000). At that time, First Nations youth in Queensland were 24.5 times more likely to be in detention than non-Indigenous young people (Bareja & Charlton, 2003, p. 17; 19), and adult First Nations Peoples were almost 12.5 times more likely to be incarcerated than non-Indigenous people (Australian Bureau of Statistics, 2001, p. 10).

In December 2000, the Labor Beattie Government (i.e., 1998–2007) and its Aboriginal and Torres Strait Islander Advisory Board signed the Aboriginal and Torres Strait Islander Justice Agreement, which aimed to reduce the incarceration rates of First Nations Peoples by 50% by 2011 and reduce the disparity between First Nations and non-Indigenous people contacting the criminal justice system (Queensland Government, 2001). The Justice Agreement included nine guiding principles and five broad strategic directions. The Agreement advocated for prevention, early intervention and the increased availability of alternatives to court through diversionary strategies (Queensland Government, 2001). In response, Attorney-General Rod Welford claimed that the Dispute Resolution Branch had employed “approximately 30 Indigenous mediators, including a full-time Indigenous mediation coordinator” to provide alternative dispute resolution services to First Nations communities (Limerick, 2002, July 10, p. 26).

In 2004, the Queensland Government contracted Professor Chris Cunneen to evaluate the progress of the Justice Agreement. Cunneen et al. (2005) reported that First Nations adults were still more likely to be imprisoned than non-Indigenous adults. They were 10.8 times overrepresented in arrest rates and 7.5 times overrepresented across all justice interventions (p. 48). Additionally, First Nations adults were less likely to be referred to a restorative justice conference, with 12 referrals (0.04% of the justice-involved First Nations population) compared to 232 (0.14%) for non-Indigenous offenders (pp. 40–41). Similarly, First Nations youth were less likely to be referred to a conference, with 500 referrals (4.32% of justice-involved youth

population) compared to 1,577 (6.66%) for non-Indigenous youth (pp. 44–45). At the same time, Childrens Court data from 1998 to 2005 showed an increasing trend in the proportion of First Nations conferencing referrals, both court-based and police referrals, from 17 (13.9% of all referrals) in 1998 to 764 (37%) in 2005 (Childrens Court of Queensland, 1998, p. 43; Cunneen et al., 2005, p. 31).

The Cunneen report provided 15 recommendations to improve progress on the Justice Agreement, including increasing police diversionary referrals and reducing arrest rates, and exploring alternatives to custody (Cunneen et al., 2005). In November 2006, the Government issued a response, acknowledging that much more was required to address the overrepresentation of First Nations Peoples, including welfare and economic support (Queensland Government, 2006) – which would later align with recommendations from the Australian Law Reform Commission (2017) and others, detailed above. The response advocated for crime prevention strategies, such as alcohol management plans, early intervention and diversionary pathways, as well as the increased use of conferencing for young people (Queensland Government, 2006). In addition to this response, the Beattie Government introduced the Mornington Island Restorative Justice Project.

The mornington island restorative justice project

The Queensland Dispute Resolution Branch launched the Mornington Island Restorative Justice Project in May 2008, under the Commonwealth Restorative Justice Action Plan (Venables, 2009). Mornington Island is shared by the Lardil, Kaiadilt and Yungkal Peoples, with a population of 1200 people in the Gununa township (Venables, 2009). The island was chosen because the Commonwealth Secretaries Group on Indigenous Affairs had identified it as a “strategic intervention site” in response to increasing concern about the prevalence of petrol sniffing (Commonwealth of Australia, 2007, February 12). However, the project was developed to address escalating community-based conflicts between adults, including civil and criminal matters (Browning, 2010; Venables, 2009). It included diversionary referral pathways from the courts, with five strategic goals, including reducing contact with the justice system and improving the system’s capacity to better address the community’s needs (Venables, 2009) – however, as the programme primarily offered court diversion, it was only possible to limit the depths of contact with the criminal justice system, rather than reducing contact as a direct outcome. The project was delivered in three phases, employing a collaborative approach, working with community and government stakeholders, including community Elders and residents.

In phase one, the Project Manager, Phil Venables, engaged with the community from June 2008 to June 2009, to establish credibility and working relationships for programme development and implementation (Venables, 2009). He employed six cultural advisors to assist with the project and engaged with approximately 200 family representatives and other island residents. He advocated for the development and implementation of an “experiential learning model,” suggesting that a sustainable mediation programme was most likely to be developed through the shared experience of conducting mediations and the learnings available from these experiences (pp. 26–32).

Mediation services officially commenced in October 2009 – phase two – and by July 2010, the project had conducted 24 mediations (Browning, 2010). An interim evaluation of the project was conducted by Mark Browning, Director of Justice Projects at the Department of Justice and Attorney-General. Browning (2010) reported that the project had a high level of support from stakeholders and the local community, and that it had delivered a culturally appropriate service. However, it was also reported that the project was not being utilised to its full potential. Browning provided seven recommendations, which included increasing the provision of training for community members, considering the establishment of a pre-court diversion pathway, and increasing the number of programme referrals. These recommendations were reportedly adopted (Venables,

2012), suggesting the programme later developed the ability to reduce contact with the criminal justice system as intended at the outset.

The final phase – full implementation – resulted in 157 mediations between October 2009 and June 2012, with 149 of these mediations achieving successful outcomes (95%), including being resolved upon intake, reaching a settlement or complete reconciliation between parties (Venables, 2012, p. 28). It was reported that 53 referrals could have prevented contact with the criminal justice system, with four cases reportedly resulting in diversion from a custodial sentence (Venables, 2012). Elder participation was reported to be a key influence on mediation outcomes, with the suggestion that the project might have also helped to improve Elder authority within the community. In October 2011, the project had transitioned to community management through the Junkuri Laka Association – a community justice group, who provide support to First Nations Peoples coming into contact with the justice system – with the additional employment of 15 Elders as co-mediators.

Venables (2012) reported that the Mornington Island Project had remained significantly under-utilised, with limited referral rates. It was recognised that there had not been a reduction in the number of court appearances overall because most appearances were for alcohol-related offences (e.g., breaches of alcohol restrictions), which were not able to be resolved through mediation. Venables (2012) argued that a more appropriate response than mediation was needed to target alcohol misuse in the community, suggesting that mediation alone was unable to alter the systemic disadvantages underpinning the community – which is reflected in concerns raised subsequently by Dawes et al. (2017) about the impacts of alcohol misuse within First Nations communities. A final evaluation was conducted by a research team from Colmar Brunton – a commercial research organisation. The team found that the community development model had fostered trust and relationship-building, which had resulted in significant community support for the project. The report recommended seven areas for improvement, which included increasing the representation of family-groups as mediators and improving referral pathways (Brunton, 2014). The team concluded that the project had achieved each of the programme goals. However, there had been no follow-up on Browning's (2010) call for future research into programme outcomes, such as recidivism outcomes, and each of the evaluations had failed to consider the experiences and needs of victims.

Progress on the aboriginal and torres strait islander justice agreement

A study, during this time, by Stewart et al. (2008) suggested more could be done to meet the goals of the Justice Agreement. A microsimulation model, the Juvenile Justice Simulation Model, was developed to explore long-term impacts of criminal justice policy in Queensland by simulating the passage of young people through the youth court system. Using this model with Queensland Police Service data on youth justice conferencing referral practices, it was anticipated that there would be a 12.5% reduction in court appearances overall by 2011 through the state-wide application of youth justice conferencing, but this would be more significant among non-Indigenous than First Nations youth (p. 357). In an ambitious simulation, with 90% of First Nations youth receiving a referral on first offence and 40% on a second offence, there could be a 60% reduction in court appearances by 2011 and a reduction in crime of 26.8% for First Nations youth (Stewart et al., 2008, p. 375). Regardless, this targeted referral proposition was not adopted.

In 2011, the final assessment of the Justice Agreement found that the Queensland Government had failed to achieve the two primary goals, with the disparities between First Nations and non-Indigenous people increasing during the 10-year agreement period (Queensland Government, 2011). The Beattie Labor Government had rejected four of the 15 recommendations of the Cunneen et al. (2005) report: to 1) develop an Aboriginal and Torres Strait Islander Justice Advisory Council; 2) abolish prison sentences of six-months or less and explore alternative approaches for working with First Nations detainees; 3) review and repeal sanctions related to Alcohol Management Plans; and 4) replace Indigenous community police – managed by local councils – with Queensland Aboriginal and Torres Strait Islander police – managed by the

Queensland Police Service. Between 2004–05 and 2009–10, there was a 9% increase in the arrest rate of First Nations Peoples, compared to a 7% decrease in the arrest rate of non-Indigenous people (Queensland Government, 2011, p. 11). In 2009–10, First Nations Peoples were almost 12 times more likely to face arrest than non-Indigenous people (p. 23). These trends may have aligned with the introduction of the Queensland Murri Court system, designed to aid in diversion from custody; although, an evaluation identified and cautioned against a net-widening effect (see Morgan & Louis, 2010).

In another study involving a cohort of young people born in 1990, Little et al. (2011) explored conference referral and court appearance rates for First Nations youth in comparison to non-Indigenous young people. They found that First Nations youth were less likely to receive a police referral to conferencing for second, third and fourth offences, and were more likely to have a court appearance for their first, second and third offences than non-Indigenous young people – which is also reflected in more recent observations made by the Australian Institute of Health and Welfare (2021b), detailed above. However, the authors acknowledged that First Nations youth were less likely to talk to police at point-of-contact, thereby restricting their ability to receive a diversionary referral under current legislation.

In 2012, the Liberal National Newman Government (i.e., 2012–2015) revoked the court-referral pathways for youth justice conferencing in an effort to crack down on youth crime. Coinciding with this change, there were significant increases in the number of: charges against young people, young people before Queensland courts, and detention orders; with simultaneous decreases in the number of cautions and conference referrals (by 71%) (Price et al., 2022a). The average daily number of young people in detention increased by 31.6% from 2011–12 to 2013–14, which was greater for First Nations youth (37.2%; from 86 to 118) compared to non-Indigenous young people (20.4%; from 49 to 59) (Department of Youth Justice, 2019). Similarly, the average daily number of adult First Nations Peoples in custody increased by 34.4% – from 1,694 in 2011–12 to 2,277 in June 2014 – compared to an increase of 21.8% for non-Indigenous adults – from 3,987 to 4,855 (Australian Bureau of Statistics, 2014).

In 2015, the Palaszczuk Labor government replaced the Newman Liberal-National government. The new government made a substantial reinvestment in restorative justice by increasing funding and reinstating the court referral pathway to conferencing (Legal Affairs and Community Safety Committee, 2016). Overall, there were large increases in the total number of conference referrals, with the number of referrals for First Nations youth increasing from 311 (37%) in 2015–16 to 1,013 (48%) in 2016–17 (Childrens Court of Queensland, 2016, p.17; 2017, p.18). Nonetheless, the rate of First Nations youth with charges disposed of in the courts increased from 45.2 per 1,000 persons in 2012–13 to 47.7 in 2016–17, compared to a decrease for all other young people from 5.0 to 4.2 per 1,000 for the same period (p. 15). In 2016–17, First Nations youth were 29 times more likely to have experienced detention than non-Indigenous young people (p. 38).

The aurukun restorative justice project

Around this time, the Aurukun Restorative Justice Project was established in response to increasing calls for help managing conflicts from the local community, home to the Wik Peoples (Limerick, 2016). The project commenced in November 2013 with assistance from the Mornington Island Restorative Justice Project Manager Phil Venables. There was reportedly an expectation, by the project manager and supporting Government agencies, of a quick consultation and implementation period, by utilising the lessons available from Mornington Island. The community consultation period commenced in February 2014, with mediations between adults commencing in March 2014.

An independent research consultant, Dr Michael Limerick, was contracted by the Queensland Government to carry out an evaluation. By this time, the project had conducted 161 mediations, including only nine victim-offender mediations, achieving a resolution rate of 68%; a much poorer result than the Mornington Island Project (95%) (Limerick, 2016; Venables, 2012). In 2015, an

eight-week period of heightened conflict within the community had resulted in the death of a community member, while both the Project Manager and Mediation Coordinator were unavailable – flagging significant issues with staffing levels. The Project Manager had been physically present in Aurukun just 54% of the time from the commencement of the project. However, Limerick (2016) found support for the project from all stakeholders, who also reported a reduction in violence and property damage between families engaged in the project. Limerick (2016) provided 14 recommendations, including further consultation and engagement with the community around programme development and implementation – suggesting the expectation to utilise the lessons from the Mornington Island project had potentially undermined the unique nature of the Aurukun community – and increasing staff levels to meet the project needs and facilitate more victim-offender mediations.

Limerick (2017) produced a final report six months later, which identified that the project had conducted 270 mediations, achieving a resolution rate of 64%. Community members reported that mediation had resulted in an overall reduction in physical conflict between parties for approximately two-weeks following mediation, regardless of the outcome. However, just 13 mediations involved victim-offender mediation. A community survey found that residents who had attended mediation expressed a high degree of satisfaction with all aspects of the experience and that most of the community had been assisted in some way by the project.

Limerick (2017) reported that police had issued 72% of referrals in 2017, but that court-based referrals had remained low, at just 8%. There had been an overall increase in crime in the community due to alcohol related issues (e.g., alcohol restriction breaches) since 2014, but there had been reductions in property damage (31%), unlawful entry (67%) and good order offences (72%), where alcohol was not a factor in the offending behaviour. However, no control group had been utilised to determine the significance of these reductions. The programme was, reportedly, constrained by staffing issues and unsuccessful formal training with few attendees (Limerick, 2017). Only one recommendation from the interim review had been fully implemented, with limited attempts to address others. Nonetheless, the final evaluation report declared the Aurukun Project to be a success, calling for continued government support to address staffing issues and infrastructure needs. The project was allocated additional funding by the Palaszczuk Labor Government and the Department of Aboriginal and Torres Strait Islander Partnerships (Queensland Government, 2019a).

The potential of restorative justice

In a paper published at this time, Brigg et al. (2018) used the Mornington Island Project to explore the cultural appropriateness of informal conflict resolution for First Nations communities. They found that the project had successfully adopted traditional cultural practices in its development, acknowledging the high level of community engagement and involvement in the project's development as a key strength. The Mornington Island Project had demonstrated that informal conflict management was able to achieve its aims, although, there was a limited impact on crime rates. Brigg et al. (2018) suggested that the project had resulted in a culturally appropriate mediation model, supporting the project as a contribution to the provision of improved justice processes for First Nations Peoples, while highlighting the continuing need to address the underlying factors contributing to conflict and crime within the community (i.e., systemic disadvantages described above).

In another academic study, Little et al. (2018) explored conferencing outcomes for First Nations youth in Queensland, using the Queensland Longitudinal Database. This database includes offending profiles for 7,900 young people born in 1990 who had contact with the criminal justice system between the ages of 10 and 19.5. Using a matched sample, Little et al. (2018) identified that First Nations youth were 1.58 times more likely to have re-engaged with the criminal justice system within two-years post-conference than non-Indigenous young people (p. 4079), and they were also quicker to reoffend, at 557 days compared to 812 (p. 4081). Despite these problems, Little et al.

(2018) acknowledged that conferencing offers many benefits to victims and offenders, and appears to be more effective at reducing recidivism rates than traditional court processes – when considering international recidivism studies. Unfortunately, the Little et al. study did not include comparisons between post-conference reoffending and other dispositions (e.g., caution and court) for First Nations and non-Indigenous young people, and no data were reported regarding the time between receiving a referral and conference completion. The authors also repeated the observation that conferencing does not address the systemic disadvantages experienced by First Nations communities, but that it could do more to address them.

Of additional note, a review of the revived post-Newman youth conferencing programme found that referrals for First Nations youth had increased in 2016–2017, but that referrals were more likely to be made by the courts than police: 594 and 409 respectively (Restorative Justice Evaluation Team, 2018, p. 28). This was an issue previously recognised by Cunneen (2008) in a commentary on the criminalisation of First Nations youth, who stated that “the general rule appears to be that the greater the police control of the referral process, the less likely Indigenous young people will benefit from the program” (p. 51). The review was very much focused on enlarging conferencing to improve the diversion of young people. Nonetheless, there was also a clear recommendation that “consideration be given to increasing the capacity of Restorative Justice Teams to identify the needs of ‘at risk’ young people and their families and provide assisted referrals to other early intervention, community support and government services” (Restorative Justice Evaluation Team, 2018, p. 65).

Report on youth justice and the youth justice strategy action plan

In 2018, Bob Atkinson, Special Advisor to the Minister for Child Safety, Youth and Women, produced the *Report on Youth Justice*, a comprehensive Department review. Atkinson (2018) acknowledged that the youth justice system continued to be challenged by the overrepresentation of First Nations youth. The report developed four objectives for the Department to consider, including early intervention, keeping children out of court, keeping children out of custody, and reducing recidivism. Atkinson (2018) provided 77 recommendations for sweeping changes throughout the Department, with three specifically for restorative justice, including for the Queensland Government to adopt other forms of restorative justice specifically for First Nations communities, such as the Mornington Island model or the New Zealand “Family Group Conferencing” model.

Following this report, the Government committed to improving and expanding youth justice services and introduced the Youth Justice Strategy Action Plan, which adopted the four objectives proposed by Atkinson (Farmer, 2019, January 11). The Palaszczuk Labor Government had made several commitments, including increasing police diversion of young offenders and trialling a new First Nations family-led decision-making programme through the Department of Youth Justice (Queensland Government, 2019b). However, these commitments do not appear to have had any significant impact to-date, and there is no evidence to-date of this new programme. First Nations Peoples were proceeded against by police in 2019–20 an average of 2.4 times, compared to 1.8 for non-Indigenous offenders (Asadullah & Morrison, 2021). First Nations youth were 27 times more likely to be held in custody than non-Indigenous young people, representing 70% of young people in custody; and the rate of First Nations adults imprisoned increased by 3% from 2019–20 to 2020–21 (Australian Bureau of Statistics, 2021; Department of Children, Youth Justice and Multicultural Affairs, 2020, p. 1).

Discussion

The present study found that restorative justice has been adopted as a means of diversion and crime prevention for First Nations Peoples in a significantly limited capacity in Queensland. The two adult-focused programmes implemented with the active involvement of First Nations communities

received substantial support from residents and achieved some successes in meeting programme aims (see also Price et al., 2022b). However, successive evaluations of these programmes flagged significant issues with referral rates, a lack of utilisation for criminal matters and an absence of post-conference follow-up data. They called for further evaluations of programme outcomes and to better address welfare-related issues. Importantly, as these programmes were place-based, accessibility to restorative justice for adult First Nations Peoples was significantly restricted. The findings of this study suggest that consecutive governments have done little to respond to recommendations. There have been no further evaluations, no substantial investment in welfare services and the outright rejection of four recommendations of the final evaluation of the Aboriginal and Torres Strait Islander Justice Agreement. Additionally, beyond the two programmes in Mornington Island and Aurukun, the broader state-run youth conferencing programme has not impacted the over-representation of First Nations Peoples, with significant disparities in referral rates and point of referral between First Nations and non-Indigenous people.

The literature suggests that restorative justice has the potential to reduce contact with the justice system through diversion and to reduce the incidence of crime, while addressing some of the systemic disadvantages facing First Nations Peoples (e.g., Cunneen et al., 2021). However, the findings show this has not yet been realised to any great extent in Queensland – which reflects similar experiences in other colonised jurisdictions, such as New Zealand and Canada (e.g., Abramson & Asadullah, 2023; Tauri, 2017). While the number of referrals to conferencing for First Nations youth had increased over time, most of these referrals were issued in court after the first point of diversion with no significant impacts on reoffending (e.g., Little et al., 2018; Restorative Justice Evaluation Team, 2018). While the Mornington Island project reportedly resulted in the diversion of a limited number of offenders, both adult projects appeared to produce no substantial reduction in reoffending overall because of alcohol-related offending (Brunton, 2014; Limerick, 2017). These programmes have been unable to address welfare-related issues, despite featuring opportunities to connect participants to therapeutic services and repair relationships between participants (Fox, 2009; Kirkwood & Hamad, 2019). This paper highlights repeated calls to better address welfare needs, with greater government support to address some of the challenges faced by First Nations Peoples resulting from European colonisation (e.g., systemic racism and socioeconomic disadvantage).

Most importantly, the findings support literature advocating for greater participation of First Nations communities in the development and implementation of restorative justice programmes (e.g., Asadullah & Morrison, 2021; Tauri, 2022), such as the Mornington Island project – considered an exemplar of community-driven programming. The Project engaged the Lardil, Kaiadilt and Yungkal Peoples at each stage of programme design and delivery, acknowledging that local experiences and knowledge were essential to successful implementation (Venables, 2012). It appears that programmes are less likely to achieve success or receive substantial community support where community involvement is not adequate, which was reported to be the case with the Aurukun Project, where community consultation and programme implementation was rushed under the assumption that the lessons from Mornington Island would be applicable (Limerick, 2016, 2017). This aligns with the recommendation by Young (2019) that First Nations communities must be actively involved in all stages of programme development and reflects similar findings by Moyle and Tauri (2016), who explored Māori experiences of the Family Group Conferencing program in New Zealand. Moyle and Tauri (2016) argued that increased Māori participation in programme development and delivery was critical to enable a culturally responsive and empowering programme.

Hence, the findings suggest that governments cannot adopt a “one-size-fits-most” approach to the implementation of restorative justice. Programmes must be tailored to each community through their active participation in development and delivery. This is applicable to place-based programmes for adult First Nations Peoples in Queensland, which must be expanded to enhance diversion, as well as the youth justice conferencing programme, which must work with First Nations Peoples to improve

programme outcomes for justice-involved First Nations youth; and restorative justice programmes for First Nations Peoples in similar jurisdictions (e.g., Canada and New Zealand). Governments need also invest more in welfare-related services for both those who are harmed and those who have harmed, and engage in continuous monitoring and evaluation of programmes to ensure optimal efficacy. Finally, there is a strong need for more First Nations voices in future research to guide and enhance practice.

As a desktop analysis, this study has highlighted important considerations for future policy and practice. While the authors engaged a cultural advisor for this paper, there are inherent limitations on the weight of these findings due to the lack of First Nations voices and cultural diversity among the authors. What is needed now is more First Nations led and engaged research, to explore more comprehensively “how” to achieve more successful processes and outcomes.

Conclusion

Restorative justice, reportedly, has the potential to assist in reducing the overrepresentation of First Nations Peoples in the criminal justice system, though this is yet to be seen in Queensland on any large-scale – as in similar jurisdictions (e.g., New Zealand and Canada; see Abramson & Asadullah, 2023; Tauri, 2017). The available literature suggests that these programmes can help to reduce contact with the justice system by providing a holistic and collaborative community-based response to crime. In Queensland, programmes have been implemented with the aim to divert First Nations Peoples from the justice system; although, the programmes have not produced any substantial effects on contacts with the criminal justice system or incarceration rates. This may be due to a lack of community consultation and engagement, as well as limitations in uptake and referral numbers and inadequate resources. First Nations communities in Australia, and abroad, must be supported to lead programme development and implementation, and there needs to be a greater investment in welfare-related support services to address systemic disadvantages experienced by these communities as the result of colonisation.

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